

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket
No. 05-311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF THE CITY OF WARRENVILLE, IL

These Comments are filed by *Warrenville, IL* in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, *Warrenville, IL* believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Warrenville, IL is a city with a population of 13,363. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1981.

Our Current Franchise

Our current franchise began on August 16, 2004 and expires on August 16, 2011. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for

franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel devoted to public access; zero channels (or capacity) devoted to educational access; and one channel devoted to government access.

Our franchise requires the Franchisee to provide and maintain an emergency override system capable of providing an audio and video signal over all of the analog Channels on the Cable System. Control over such override is assigned to the City and the audio and video signals are operable by the City from remote locations. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

- A. Franchisee shall comply with the FCC Customer service standards including any future amendments thereto.
- B. The Franchisee shall provide a thirty-day written notice of all programming changes and price adjustments to the City.
- C. In the instances of the Franchisee's intention to add or supplement programming without re-locating existing programming or other services or impacting customer bills the Franchisee should be permitted to provide such programming or services as soon as possible. Therefore in those instances the Franchisee shall do so at the earliest practical opportunity and make every effort to notify the City and its customers of those additional benefits as soon as possible.
- D. Any customer shall have the right to have their service disconnected, in accordance with applicable federal and State law, which shall include the removal of any equipment owned by Franchisee from the customer's residence.

Our franchise requires that the cable operator currently provide service to all areas of our community. Unlike DSL, from the local phone company, the local cable provider services all of Warrenville.

In order to ensure that our residents have access to current telecommunications technologies, our previous franchise contained specific upgrade requirements. All of which were met by the cable provider in 2000.

Our franchise contains a "Level Playing Field" provision, which states the following: The parties acknowledge the existence and applicability of the terms and conditions of 65 ILCS 5/11-42-11, Illinois's Cable Television Level Playing Field statute to the issuance of additional franchises granted by the City to new operators of cable systems in the City of Warrenville.

Our franchise contains the following insurance and bonding requirements:

- a. Commercial General Liability Insurance. Comprehensive or Commercial general liability insurance, including, but not limited to, coverage for bodily injury, personal injury, and property damage shall be maintained at the sum(s) of five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) aggregate.
- b. Business Automobile Liability. Comprehensive automobile liability include, but not limited to, non-ownership and hired car coverage as well as owned vehicles with coverage for bodily injury and property damage, shall be maintained at the sum(s) of three million dollars (\$3,000,000) per accident.
- c. Property Loss. Fire insurance with coverage for extended perils on the Franchise property used by the Franchisee in the conduct of Franchise operations in an amount adequate to enable the Franchisee to resume Franchise operations following the occurrence of any risk covered by this insurance.
- d. Workers Compensation Insurance. In such coverage, with statutory limits as may be required by the State of Illinois.

On the effective date of the Franchise Agreement, the Company established a permanent Security Fund with the City in the amount of \$10,000 in the form of a corporate surety bond, which complies with the generally utilized requirements of the City for such instruments provided by other occupants of the right-of-ways. The Company maintains the Security Fund so long as any part of the System is located within the Public Ways of the City. Should an existing fund be in place the Franchisee has at least 30 days to replace the existing fund in order to comply with the agreement.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to

obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: Upon Request, no more than once annually, the Franchisee shall file with the Director of Finance and Information Services an annual report, prepared and audited by a representative of the Franchisee, showing the yearly total Gross Revenues for Franchisee's preceding fiscal year. The annual report shall be provided to the City within one hundred twenty (120) calendar days of Franchisee's fiscal year end.

Amounts. Because Grantee's failure to comply with or to perform certain obligations under this Franchise Agreement, or its failure to do so in a timely manner may result in damage to the City that is difficult to determine, the City and the Grantee agree to the following liquidated damages as the liquidated sum or sums to be reasonably paid in light of the anticipated loss caused by or resulting from the specified violation, default and resulting injury:

1. Failure to provide data, documents, applications or reports, including financial reports to the City---\$50.00 per day or any part thereof until filed.
2. Failure of Grantee to provide or maintain required insurance coverage---\$150.00 per day from the time the insurance lapsed until policy is reinstated, but not more than \$750.00 for failure to provide evidence of required insurance.
3. Commission of a material violations of this Franchise Agreement as set forth in Section 17 of this Agreement---\$100.00 per day.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Modification: The Franchisee and the City shall follow the procedures for Franchise modifications as established by the Cable Communications Policy Act of 1984 as set forth in Section 625 (47 CFR §545). This provision only pertains to those modifications meeting the specific parameters of Section 625. Either party has the right to propose any mutually agreed to modifications in writing at any time.

Competitive Cable Systems

Our community has never been approached by a competitive provider to provide service.

Conclusions

The local cable franchising process functions well in *Warrenville, IL*. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The *Warrenville, IL* therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Warrenville, IL

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